

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1521 of 1999

in

MISC.CIVIL APPLICATION No 346 of 1999

with

CIVIL APPLICATION NO. 12896 OF 1999

with

LETTERS PATENT APPEAL NO. 1522 OF 1999

IN

misc. civil application no. 354 of 1999

WITH

civil application no 12898 of 1999

For Approval and Signature:

Hon'ble ACTG.CHIEF JUSTICE MR. C.K.THAKKAR and

MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

SAHEBJADA M GUPTA

Versus

SAYAJI IRON & ENGINEERING CO PVT LTD

Appearance:

MR KM PARIKH for Appellant

Mr Y.H.VYAS FOR Trivedi and Gupta, for respondents

CORAM : ACTG.CHIEF JUSTICE MR. C.K.THAKKAR and

MR.JUSTICE D.P.BUCH

Date of decision: 20/12/1999

ORAL JUDGEMENT

Admitted. Mr. Y.H.Vyas of Trivedi and Gupta , advocates, appears and waives service of admission on behalf of the respondent. In the facts and circumstances, both the matters are taken up for final hearing today.

Both the appeals are filed against the orders passed by the learned Single Judge dismissing SCAs in absence of learned advocate for the petitioners and also rejecting applications for restoration.

On February 5, 1999, when the matters were called out, learned counsel for the appellants was not present. The learned Single Judge observed that at an earlier occasion also, the counsel was not present. The matters were, hence, dismissed in absence of the learned counsel.

In MCAs, it was stated that Mr.Parikh appearing for Mr. Panchal for the applicants made efforts to contact Mr. Parikh , but could not succeed and that is how, could not remain present in court, and the matters stood dismissed. It was,therefore, sufficient ground for restoration of the petitions by the learned Single Judge learned Single Judge, however, rejected the applications observing that " no ground has been disclosed for non-appearance on 5.2.1999". These orders are under challenge in these appeals.

Mr. Y.V. Vyas appearing for the respondent has contended that the appeals deserve to be dismissed as the learned Single Judge has not committed an error of law.

In the facts and circumstances of the case, in our opinion, it cannot be said that there was negligence or inaction on the part of the appellants in not appearing before the learned Single Judge. From the record, it is clear that both the petitions were of 1998. Again, they

were not adjourned for several occasions. On one occasion,earlier, the counsel for the appellants was not present and they were adjourned and on the second occasion, orders were passed.

In these circumstances, both the appeals deserve to be allowed and are accordingly allowed. The orders passed by the learned Single Judge on the petitions as well as MCAs are set aside. Office is directed to place the matters for hearing before the learned Single Judge taking up such matters.

We may, however, state that as we are setting aside the orders passed by the learned Single Judge of dismissal of petitions for non-appearance of learned counsel for the petitioners-appellants, we may not be understood to have stated anything on merits of the matter and as and when the matters will be placed for hearing,learned Single Judge will decide them in accordance with law.

For the foregoing reasons, both the LPAs are allowed. No order as to costs. No order on CAs.

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parekh